Filed 5/6/14 Marriage of Yu and Luo CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of MICHAEL H. YU and VIVIAN LUO.	
MICHAEL H. YU, Respondent, v. VIVIAN LUO, Appellant.	G047033 (Super. Ct. No. 08D007794) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Claudia Silbar, Judge. Affirmed.

Merritt L. McKeon; Law Office of Stephen J. Mooney and Stephen J. Mooney for Appellant.

Michael H. Yu, in pro. per., for Respondent.

* * *

INTRODUCTION

Vivian Luo appeals from a judgment dissolving her marriage to Michael H. Yu, setting spousal support, and dividing their property. To the extent the issues raised in Luo's appellate brief are properly before this court, we reject them. The trial court's findings were supported by substantial evidence, and the trial court did not err in its legal conclusions. We therefore affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Yu and Luo were married in 1988; Yu filed a petition for dissolution of the marriage in August 2008. As of that time, Yu and Luo had three minor children.

About two weeks before Yu filed the petition for dissolution, Luo sought and obtained a temporary restraining order against Yu. The trial court later entered a mutual restraining order after hearing, which awarded physical and legal custody of the minor children to Luo, with visitation granted to Yu. The domestic violence and dissolution cases were consolidated.

In March 2009, the court ordered, pendente lite, that Yu and Luo should have joint legal custody of, that Yu should have primary physical custody of, and that Luo should have visitation with, the minor children. Luo was ordered to have visitation with the youngest child, who was not yet five years old and not in school, from 6:30 a.m. to 6:00 p.m. on weekdays, with one midweek overnight visit, and on alternating weekends. Luo was ordered to pay Yu child support for the two older children, and Yu was ordered to pay Luo child support for the youngest child, with a net payment of $674 monthly by Yu to Luo. The court also ordered Yu to pay the mortgage on the family home in lieu of spousal support to Luo.

In January 2010, Luo filed a statement of disqualification of Judge Claudia Silbar, pursuant to Code of Civil Procedure section 170.3, subdivision (c). Luo claimed that Judge Silbar was biased against her because Luo was a woman, a mother, and

disabled. Judge Silbar, pursuant to Code of Civil Procedure section 170.4, subdivision (b), determined that the statement of disqualification, on its face, disclosed no legal grounds for disqualification, and therefore ordered it stricken.

At a bifurcated trial on issues of custody and visitation, conducted in January 2010, the court ordered that Yu and Luo would share legal custody of the children, and Yu would have sole physical custody. Luo was granted visitation with the children. No appeal from this judgment was filed.

At a hearing in January 2011, the trial court, on its own motion and over Luo's objection, ordered a guardian ad litem appointed for Luo. The court set four requirements to be met before the guardian ad litem could be relieved: (1) Luo was required to file a proof of service for the preliminary declaration of disclosure; (2) neither side objected to an order relieving the guardian ad litem; (3) newly retained counsel for Luo had filed a substitution of attorney form; and (4) newly retained counsel agreed not to withdraw from or substitute out of the case until it had been concluded. When those requirements had been met to the court's satisfaction, the court relieved the guardian ad litem of her duties, and ordered Luo to pay the guardian ad litem's fees of $5,220.

After a trial on the remaining issues of status, spousal support, and property division, the court entered judgment in April 2012, (1) dissolving the marriage, (2) ordering Yu to pay Luo $1,600 per month in spousal support, and (3) dividing the parties' property and ordering an equalizing payment from Yu to Luo. Luo filed a timely notice of appeal. Luo filed a separate appeal from the court's orders denying a series of postjudgment motions; that appeal (case No. G047256) was dismissed.

On appeal, Luo filed an opening brief through retained counsel. Yu, in propria persona, filed a respondent's brief that addressed each of the issues raised in Luo's opening brief. Through a different retained counsel, Luo sought and received leave to file a late reply brief. With the exception of claims of judicial bias and failure to award attorney fees, instead of addressing the arguments raised in the opening and

respondent's briefs, the reply brief raised many new arguments for the first time. It is well established that an appellate court will generally not consider arguments made for the first time in a reply brief. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 799.) That is particularly true in this case, where the unrepresented respondent did not have an opportunity to address the new issues argued in the appellant's reply brief. Luo's attempt to present a whole new set of arguments in her reply brief is impermissible.

DISCUSSION

I.

APPOINTMENT OF A GUARDIAN AD LITEM

Luo argues her due process rights were violated by the appointment of a guardian ad litem because the trial court conducted an inadequate hearing on Luo's competency. The portion of the hearing, during which the court inquired of Luo before appointing the guardian ad litem, was filed under seal, and is not a part of the appellate record. Luo has failed to provide a sufficient record for us to consider her appeal on this issue.

Even if the court had erred in appointing the guardian ad litem, we would conclude the error was harmless. (See, e.g., *In re James F.* (2008) 42 Cal.4th 901, 915 [appointment of guardian ad litem in violation of due process rights subject to harmless error analysis].) The guardian ad litem was relieved of her duties just two months after being appointed. No substantive court actions took place during that time. The short time during which the guardian ad litem was appointed did not prejudice Luo.

II.

ATTORNEY FEES

Luo argues that the trial court abused its discretion by failing to order Yu to pay a portion of Luo's attorney fees, pursuant to Family Code sections 2030 and 2032.

"Pursuant to Family Code sections 2030 and 2032, the trial court is empowered to award fees and costs between the parties based on their relative circumstances in order to ensure parity of legal representation in the action. It is entitled to take into consideration the need for the award to enable each party to have sufficient financial resources to present his or her case adequately. In assessing a party's relative need and the other party's ability to pay, it is to take into account '"'all evidence concerning the parties' current incomes, assets, and abilities.'"' [Citation.] That a party who is requesting fees and costs has the resources is not, by itself, a bar to an award of part or all of such party's fees. Financial resources are only one factor to consider. [Citation.] The trial court may also consider the other party's trial tactics. [Citations.] [¶] In summary, the proper legal standard for determining an attorney fee award requires the trial court to determine how to apportion the cost of the proceedings equitably between the parties under their relative circumstances. [Citation.] In making this determination, the trial court has broad discretion in ruling on a motion for fees and costs; we will not reverse absent a showing that no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order. [Citation.] However, 'although the trial court has considerable discretion in fashioning a need-based fee award [citation], the record must reflect that the trial court actually exercised that discretion, and considered the statutory factors in exercising that discretion.' [Citation.]" (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 974-975, fn. omitted.)

We address each instance cited in Luo's opening appellate brief in which she claims the trial court erroneously denied a request for need-based fees, made pursuant to Family Code sections 2030 and 2032. In August 2009, Luo filed an order to show cause which included, among other things, a request for $5,000 from Yu for attorney fees. Following a hearing, the trial court ordered Yu to pay $2,000 directly to Luo's newly retained attorney. At the hearing, the court considered a number of factors,

including the parties' respective incomes and expenses,[1] their assets, and the fact that both were at that time unrepresented by counsel, and made an assessment of Yu's ability to pay attorney fees for himself and Luo while continuing to meet his monthly expenses. The trial court did not abuse its discretion in ordering Yu to pay $2,000 for Luo's attorney fees at that time, rather than the $5,000 sought by Luo, based on the relevant factors. (*In re Marriage of Falcone & Fyke*, *supra*, 203 Cal.App.4th at pp. 974-975.)[2] The court was permitted to consider whether the award of attorney fees would negatively affect parity between the parties, by providing Luo with retained counsel while Yu continued to represent himself. (See *Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 242, 252.)

On January 10, 2011, the date originally scheduled for trial of the financial issues of support and property division, Luo filed a trial brief in which she stated a new attorney had agreed to represent her, and that she would seek a continuance in order to retain the attorney. Contrary to the implication in Luo's opening brief, the trial brief did not contain a request that Yu be ordered to pay some or all of Luo's attorney fees pursuant to Family Code sections 2030 and 2032. In fact, the trial brief stated that the nonrefundable retainer requested by the new attorney would be paid out of Luo's home equity. (The trial did not occur that day because Luo's behavior caused the trial court to appoint a guardian ad litem, as discussed *ante*.)

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[1] Luo argues, for the first time in her reply brief, that the trial court considered only Yu's finances, rather than the finances of both parties. Nothing in the appellate record, however, supports that contention.

[2] Luo contends that *In re Marriage of Falcon & Fyke* is distinguishable because in that case, the wife did not suffer from mental or medical disabilities, the husband had not left the children in the wife's care while he travelled to China, and the husband had not collected the wife's Social Security Disability Insurance benefits to support children who lived "largely" with her. *In re Marriage of Falcon & Fyke* sets forth the applicable law in this area, and is on point legally despite not being factually identical to this case.

On June 30, 2011, yet another newly retained attorney for Luo filed a motion for the appointment of a forensic accountant to uncover money that Luo believed Yu had failed to disclose. The motion also sought an award of attorney fees against Yu in the amount of $4,500. That fee request was not made pursuant to Family Code sections 2030 and 2032. Instead, Luo claimed Yu had made the filing of the motion necessary due to his failure to make a full and complete disclosure of assets, and his breach of fiduciary duty to Luo. The motion was denied without prejudice as premature, and the trial court did not abuse its discretion in failing to award the attorney fees generated in preparation of the motion.

In October 2011, still another new attorney for Luo filed a notice of request for attorney fees pursuant to Family Code sections 271 and 2030. The court advised the parties that it would base any attorney fee award on the difference between their respective incomes and expenses at the end of the proceedings. Before the proceedings ended, Luo again fired her retained attorney. In ruling on a motion for need-based attorney fees, the trial court may consider the requesting party's tactics, including the timing of the motion on the eve of trial, if granting the motion would require a trial continuance for new counsel to get up to speed on the case. (*In re Marriage of Falcone & Fyke*, *supra*, 203 Cal.App.4th at pp. 976-977.) The trial court did not abuse its discretion in refusing to rule on the attorney fee request at that time. (Luo has failed to inform this court whether the trial court addressed the issue later, or whether Luo asked the trial court to do so.)

The statement in the opening appellate brief that Luo "continuously asked for attorney fees" is not accurate. In each instance of fees requested, which is mentioned in the opening brief, detailed *ante*, we find no abuse of discretion by the trial court.

III.

JUDICIAL BIAS

Luo next argues that the judgment must be reversed because the trial judge exhibited bias against her.[3] Luo filed a statement of disqualification of Judge Silbar in January 2010.[4] Judge Silbar struck the statement of disqualification because it failed, on its face, to reveal any grounds for disqualification. "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification. If the notice of entry is served by mail, that time shall be extended as provided in subdivision (a) of Section 1013." (Code Civ. Proc., § 170.3, subd. (d).) The order striking the statement of disqualification specifically advised Luo of the statutory time to file for a writ of mandate. Luo did not seek review of Judge Silbar's order striking the statement of disqualification by a petition for a writ of mandate. The propriety of the trial court's action cannot be reviewed on this appeal.

Luo argues that she should have been relieved of having to seek writ relief because the court refused to award her attorney fees and because of her disabilities. As noted, *ante*, Luo did not request attorney fees at the time the statement of disqualification was at issue. Luo fails to explain how her disabilities prevented her from seeking writ

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[3] In her reply brief, Luo argues that the judgment awarding custody of the children to Yu must be reversed due to the trial court's bias. Luo did not appeal from the judgment on that bifurcated issue. Additionally, this argument is raised for the first time in Luo's reply brief, and may therefore be deemed waived. (*West v. JPMorgan Chase Bank, N.A., supra*, 214 Cal.App.4th at p. 799.) Although we will not consider the new argument that the custody judgment must be reversed, we will consider the facts and circumstances cited in the reply brief in our review of Luo's claim of judicial bias in the judgment before us on appeal.

[4] Luo filed the statement of disqualification in propria persona, although she was represented by counsel at that time.

relief, while they did not prevent her from filing the statement of disqualification in the first place.

Luo also argues that her statement of disqualification under Code of Civil Procedure section 170.3 should be treated as a standing objection to Judge Silbar. Luo provides no legal support for that argument. Indeed, given the standard applicable to claims of judicial bias, discussed *post*, a blanket objection on the ground of judicial bias would be improper.

Luo argues that the trial court's findings show its judicial bias toward Luo. Specifically, Luo points to the following: the court refused her requests for an attorney (which we take to mean requests for a need-based fee award from Yu, so Luo could hire an attorney); the court appointed a guardian ad litem for Luo; the court failed to conduct any hearings on the actual time-sharing of the minor children or to modify the child custody order entered after a bifurcated trial; the court denied Luo's motion for a new trial; and the court issued a warning to Luo under *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705 (*Gavron*) after the trial.

It is unclear whether Luo is asserting her claim of judicial bias under the federal due process clause, or as a matter of state law. In either case, we would conclude no bias, much less bias justifying disqualification, has been shown. Actual bias need not be proven to establish a due process violation. (*People v. Freeman* (2010) 47 Cal.4th 993, 1001.) The party claiming bias, however, must establish "circumstances where, even if actual bias is not demonstrated, the probability of bias on the part of a judge is so great as to become 'constitutionally intolerable.' [Citation.] The standard is an objective one." (*Ibid.*) Under state law, the test is still an objective one; we consider whether a "reasonable person could doubt whether the trial was fair and impartial." (*Haluck v. Ricoh Electronics, Inc.* (2007) 151 Cal.App.4th 994, 997.)

As explained *ante*, the trial court did not err in denying Luo's requests for need-based attorney fees, or in appointing a guardian ad litem. Luo fails to offer any

evidence supporting her contention that the court's proper handling of those issues established bias.

As to the claimed failure to conduct any hearings on the time-sharing of the minor children, the trial court conducted a trial in January 2010 on the issues of child custody and visitation, after which Yu was awarded sole physical custody of the children, and Yu and Luo were awarded joint legal custody of the children. During the ensuing months, Luo filed many orders to show cause asking that custody be reevaluated, and claiming that the children were actually living with her, not with Yu. The court refused to consider piecemeal the issues Luo was raising, and instead ordered that they would be considered at trial. The trial, however, continued to be delayed due to the revolving door of attorneys representing the parties and Luo's repeated requests for a continuance due to her medical issues. The judgment that is actually before us on this appeal does not address issues of child custody and support, so we cannot consider the merits of those issues.

In her reply brief, Luo points to many facts she claims the trial court failed to consider, as well as facts and circumstances to which she claims the trial court gave too much weight in reaching its decision regarding child custody, and claims that those facts and circumstances establish judicial bias against her by the trial court. What Luo is really arguing is not so much that the court was biased against her, but that the court abused its discretion in reaching the decision regarding custody. Even if the custody judgment were before us, it appears that substantial evidence supported the trial court's decision.

Luo fails to specify how the denial of the motion for a new trial shows any bias by the trial court. The motion was brought on multiple grounds. The trial court conducted a hearing on the motion for a new trial, at which Luo agreed that the only ground she was asserting was that she had newly discovered evidence explaining why she could not speak on the day of trial. The court determined that the declaration from Luo's

doctor did not contain newly discovered evidence, and therefore denied the motion. If the merits of the motion for a new trial were before us, we would not find any abuse of discretion on the part of the trial court, having reviewed the entire record in the case. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832.) Our review of the record does not reveal any bias on the part of the trial judge in denying the motion.

Finally, Luo contends the trial court exhibited bias by issuing a *Gavron* warning. In *Gavron, supra*, 203 Cal.App.3d at page 712, the appellate court concluded that the trial court erred in terminating spousal support, which had originally been awarded for eight years following the dissolution of a long-term marriage, because "the record does not indicate that this unemployed 57-year-old wife had any prior awareness that the court would require her to become self-sufficient." The court held that a supported spouse must be made aware of the court's expectation that he or she will attempt to become self-supporting: "Inherent in the concept that the supported spouse's failure to at least make good-faith efforts to become self-sufficient can constitute a change in circumstances which could warrant a modification in spousal support is the premise that the supported spouse be made aware of the obligation to become self-supporting. It is particularly appropriate here that there should have been some reasonable advance warning that after an appropriate period of time the supported spouse was expected to become self-sufficient or face onerous legal and financial consequences. . . . [¶] . . . For example, there may be an explicit statement by the court at the time of its original support order regarding employment expectations of the supported spouse [citation] . . . ." (*Ibid*.) The Legislature has codified the *Gavron* warning: "When making an order for spousal support, the court may advise the recipient of support that he or she should make reasonable efforts to assist in providing for his or her support needs, taking into account the particular circumstances considered by the court pursuant to Section 4320, unless, in the case of a marriage of long duration as provided for in

Section 4336, the court decides this warning is inadvisable." (Fam. Code, § 4330, subd. (b).)

In the judgment, the trial court refused Yu's request to impute income to Luo, but made the following finding in connection with the order of $1,600 per month in spousal support from Yu to Luo: "The court finds respondent/wife has the ability to work." Luo fails to explain how this finding establishes bias on the part of the trial court. The evidence supports the court's finding. Luo was intelligent and well educated, having received two master's degrees. She had handled the management of the parties' rental property. The *Gavron* warning has no legal effect on Luo at this point. It *may* affect her if Yu later seeks to modify the spousal support order, but, even at that point, it will not be conclusive of anything.

In her opening appellate brief, Luo argues that the court's bias toward her was shown when the court questioned her about why the minor children were receiving government benefits. Luo contends that the court was "insensitive at best" when it remarked, "[m]y children don't get money from the government." When we look at the full colloquy between the court, counsel, and the parties, it becomes evident that the court was not insensitive; rather, the court was initially misinformed about the nature of the benefits at issue.

"Mr. Levinson [(Luo's counsel)]: . . . [¶] And something else [Yu] hasn't reported to the court, he's getting Social Security for the kids, even though he doesn't have [the] kids the substantial—most of the time. [¶] He gets—her Social-Security payments go to him. It's almost $700 a month. He doesn't disclose that to the court.

"The Court: Is that correct, sir?

"Mr. Yu: Ah, it was, umm—umm, I got it back, I think, June last year '09. And then she—it's like back and forth. [¶] She went to Social Security and got back to them. And then she sent me statements saying it's going to be stopped, it's going to send to another payee.

"The Court: Now, say that again. Are you receiving Social Security?

"Mr. Yu: Currently I am receiving Social Security for the three kids. Total about 600 some dollars.

"The Court: All right, and when did you start receiving that?

"Mr. Yu: I started receiving them, umm, let me see here, Your Honor (indicating).

"The Court: I don't know whether the court should consider or can legally consider—

"Mr. Yu: Umm—

"The Court: —just a moment, sir, disability payments to children as a source of attorney fees.

"Mr. Levinson: Well, you know, I'll just indicate the court is trying to figure out how much disposable income he has, and he's not even reporting this money for money that he gets, because the Social Security Administration believes he's got the custody of the children, when really she has got about 70-, 80-percent custody.

"The Court: Well, that's in dispute. That is in dispute. I'll be honest with you, in the past I have not found Mr. Yu to be dishonest with the court—

"Mr. Yu: Your Honor—

"The Court: —and he has spoken to the court under oath on a multitude of occasions. [¶] I have not—

"Mr. Levinson: Well—

"Mr. Yu: Your Honor, if you look at—

"The Court: —found that—

"Mr. Yu: If you look at the income and expense declaration.

"The Court: When did you receiving it—start receiving it?

"Mr. Yu: No earlier than March 2009, because I have records showing that the respondent [(Luo)] received them, full amount up to February '09. Since that point I don't have record.

"The Court: Okay—

"Mr. Yu: And—

"The Court: —why are you receiving—why are the children receiving disability benefits from the government?

"Mr. Yu: Ah, they—it's like automatic. They because—

"The Court: Automatic? No, it's not, because my children don't receive it.

"Mr. Yu: Well, I mean, because the mother is considered disabled—

"The Court: Oh, okay.

"Mr. Yu: —so they gave benefits to the children.

"The Court: They receive disability benefits to the children as a result of mother's disability?

"Mr. Yu: That's correct.

"The Court: Okay."

Ultimately, Yu showed the court he had disclosed the disability benefits on his income and expense declaration as income to the children. As the court noted, "[d]isability payments to children are not considered income to a parent under tax law . . . . It's meant to assist the children, not to assist the parent."

IV.

ALLEGED FAILURE TO ADDRESS FAMILY CODE SECTION 4320 FACTORS

Luo next argues that the trial court erred by failing to address the factors set forth in Family Code section 4320, which are required when ordering spousal support. We need not consider this argument at any length. At the conclusion of the trial, the court addressed each of the section 4320 factors on the record, and explained how each

applied to the court's determination of the spousal support award. Luo's argument on this point is without merit.

V.

FAILURE TO APPOINT A FORENSIC ACCOUNTANT

For the first time in her reply brief, Luo argues that the trial court erred by failing to appoint a forensic accountant. This argument is deemed waived. (*West v. JPMorgan Chase Bank, N.A.*, *supra*, 214 Cal.App.4th at p. 799.) To the extent Luo's argument on this point raises issues regarding her claim of judicial bias, addressed *ante*, we have considered it as appropriate.

In June 2011, Luo, through retained counsel, filed an ex parte motion for the appointment of a forensic accountant, pursuant to Evidence Code section 730. At a hearing in July 2011, the trial court tentatively indicated it would grant the motion, but first ordered Yu to share all relevant documents with Luo's counsel and the parties to then determine whether a forensic accountant was, in fact, necessary. At the continued hearing, after Luo's retained counsel substituted out due to Luo's desire to represent herself, the court initially ordered the appointment of a forensic accountant to trace Yu's IRA rollover account "from its origination from a Northrup IRA account until present." (The court refused to order the forensic accountant to look at other accounts for which no account information had been provided, or which were under both parties' control during their marriage, six years before the hearing date.) The court vacated its order when Luo made clear that she was not seeking the appointment of a forensic accountant to trace Yu's alleged transfers of funds from community accounts, but to opine on whether Yu's trading was reckless or grossly negligent.

"Ms. Luo: It's true for his accountant information we don't need a forensic accountant, we already knew where the money came from and already knew where the money went. [¶] So the reason for—reason for appointing any forensic accountant is to

look at the broad—for this I reject any forensic accountant. So we both already acknowledge, agree where the money went to.

"The Court: Wait just a minute. [¶] You are telling me the account I just noted, Ameritrade account ending in 2449 you don't have a question about that?

"Ms. Luo: I have a question, but not for where the money came from, where the money went to, but for the—for his reckless trading.

"The Court: It's not what an accountant tells me.

"Ms. Luo: Then that's another thing.

"The Court: I'm not going to appoint the accountant, then, if it's all you want to know. [¶] So just so the record is clear, she wants me to appoint the accountant to see if it was reckless trading.

"Ms. Luo: No, I haven't finished.

"The Court: Do not interrupt me.

"Ms. Luo: Okay.

"The Court: That's not what a forensic accountant can do. So I'm going to withdraw my order and we are not going to trace that account. [¶] I'm going to find that the other two accounts, which have no name, no account number, and no reference are impossible for the court to trace—

"Ms. Luo: Your Honor—

"The Court: —other than these 2006, who are joint accounts, which appear to be roll overs from CD's during the course of the marriage of the parties, unless— [¶] . . . [¶]

"The Court: This is premature, I'm not going to appoint one. [¶] I tell you what, ma'am, both of you two have equal access to these accounts, an accountant does not. The accountant would require the two of you to go through those records, produce them, and turn them over to the accountant.

"Ms. Luo: I agree with you.

"The Court: The accountant is not the one who goes through these. I'm denying the motion without prejudice. I just don't have enough information.

"Ms. Luo: Your Honor, you asked me specifically where this money go, where the statement, that's why I show you [the] statement. [¶] But my request is look at all the account. I here laid on this table of at least several account number I can tell you which all involves his gross fraud and reckless breach of fiduciary responsibility—

"The Court: Okay, I'm denying—

"Ms. Luo: —that's what I'm requesting.

"The Court: —I'm denying the motion for insufficient basis to go forward. I don't have enough information to appoint an accountant. [¶] It would be a fishing expedition and it would cost thousands and thousands of dollars, and it doesn't appear that all the records are available for him to even review.

"Ms. Luo: I—

"The Court: He's $400 an hour, the accountant is—

"Ms. Luo: Your Honor, I am—

"The Court: —$500 an hour.

"Ms. Luo: I'm fine with the cost. Right here this one suitcase is—information is available (indicating).

"The Court: All right, take your time and look through it. I'm denying the motion.

"Ms. Luo: Okay, for expert witness to go through all that information to find out the petitioner had the gross fraud during the course of the marriage.

"The Court: Okay, you can argue that at the trial. You both have a trial coming up. [¶] For now I'm denying the motion without prejudice. If somebody comes up with something specific, they can present it to me, okay? [¶] That's it."

Even if we were to consider this argument, we would find no abuse of discretion in the trial court's denial of the motion for appointment of a forensic

accountant. At the hearing, Luo asked for an accountant to undertake a vastly different task from the one originally proposed. That task was better suited to a retained expert, which Luo admitted she could have afforded to pay. Further, the court denied the motion without prejudice so that either party was free to come back and make the request again.

VI.

INCORRECT CALCULATION OF SPOUSAL SUPPORT CREDIT

For the first time in her reply brief, Luo argues that the trial court incorrectly calculated the amount of spousal support credit to which Yu was entitled. We deem the issue waived on appeal. (*West v. JPMorgan Chase Bank, N.A., supra,* 214 Cal.App.4th at p. 799.)

VII.

AMERITRADE ACCOUNT

Also for the first time in her reply brief, Luo argues that in ordering Yu to pay Luo one-half the value of a community account that Yu traded down to zero, the trial court used an incorrect starting amount. Luo claims the value of the IRA account at Ameritrade was initially $132,000 when it was rolled over from Yu's previous employer in November 2007. At trial, Yu was ordered to pay Luo half the value of the account. Luo contends, in her reply brief, that Yu offered evidence at trial accounting for $91,000, and that he was ordered to pay her half of that amount. The citation in the reply brief, however, does not reference any specific amount of a payment by Yu to Luo, much less does it provide support for the claim that Yu accounted for $91,000 of the Ameritrade account. In addition to being raised for the first time in Luo's reply brief (*West v. JPMorgan Chase Bank, N.A., supra,* 214 Cal.App.4th at p. 799), the issue is not supported by reference to the record, which prohibits this court from fully considering it.

VIII.

FAILURE TO CONTINUE TRIAL DUE TO LUO'S ILLNESS

Luo argues for the first time in her reply brief that the trial court erred by failing to continue the trial due to her illness.

Even if we were to decide that the issue had not been waived by failing to raise it earlier (*West v. JPMorgan Chase Bank, N.A.*, *supra*, 214 Cal.App.4th at p. 799), we would review the issue for an abuse of discretion (*Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 714). In this case, the court did not abuse its discretion in denying the motion to continue, given the multiple delays caused by Luo's rotating door of attorneys and the exceptionally long time the case had taken to get to that point.

IX.

DENIAL OF POSTTRIAL MOTIONS

Luo argues for the first time in her reply brief that the trial court erred by denying her posttrial motions; the argument is deemed waived. (*West v. JPMorgan Chase Bank, N.A.*, *supra*, 214 Cal.App.4th at p. 799.) Moreover, Luo filed a separate notice of appeal from the order denying her posttrial motions, in case No. G047256. That appeal was dismissed, and Luo cannot argue in this appeal the issues that were properly raised in a separate, no longer pending, appeal.

X.

ISSUANCE OF SPOUSAL SUPPORT ORDER IN ABSENCE OF CURRENT INCOME AND EXPENSE DECLARATIONS

Luo argues that the trial court should not have issued a spousal support order because Luo and Yu did not have current income and expense declarations on file. This argument, too, is raised for the first time in Luo's reply brief, and we deem it to be waived. (*West v. JPMorgan Chase Bank, N.A.*, *supra*, 214 Cal.App.4th at p. 799.)

California Rules of Court, rule 5.260(a) requires that current income and expense declarations be on file before a support order issues. "Current" is defined by rule 5.260(a)(3) as "completed within the past three months providing no facts have changed." An issue not addressed by Luo's reply brief is the meaning of the phrase "providing no facts have changed" in rule 5.260(a)(3). Does the rule require that an updated declaration be submitted if the facts have changed within three months of the hearing? Or does it mean that a declaration filed more than three months before the hearing is adequate as long as the facts have not changed?

No matter the meaning of California Rules of Court, rule 5.260(a)(3), Luo's argument would suffer two significant problems. First, Luo did not object to the trial on financial issues occurring or the support order being entered based on the parties' failure to have updated income and expense declarations on file. Nothing in rule 5.260(a) indicates that failure to comply with the rule requires reversal per se. Indeed, Orange County Superior Court Local Rules, rule 702 A., which addresses the same topic as California Rules of Court, rule 5.260, provides that "the court may take any action it deems appropriate, including, but not limited to, ordering the matter off calendar or continuing it under appropriate conditions" if a current income and expense declaration has not been filed and served at the time of a hearing on financial issues. This shows that the trial court has discretion to ignore the failure if it is not raised.

Second, Luo fails to explain why the entry of the spousal support order without current income and expense declarations is prejudicial. Before the trial, which concluded in February 2012, Luo had last filed a declaration in October 2011, and Yu had last filed one in January 2011, so neither party's declaration was current. Luo does not show that the financial information of either party had changed since the last declarations were filed, and, therefore, there is no indication of any prejudice to either party. Of course, it is preferable that the court have updated and current financial information before it enters an order regarding financial issues in a family law case. In

some cases, the issuance of a support order without current income and expense declarations would be reversible error. In this case, however, we cannot discern any prejudice.

XI.

ADDITIONAL ISSUES

Luo raises a few additional issues, without providing any specific argument. To meet the burden of affirmatively demonstrating error, an appellant must raise issues for review, and support each issue raised with argument, legal authority, and citations to the record. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 367-368; *In re S.C.* (2006) 138 Cal.App.4th 396, 406.) If an appellant fails to raise an issue, or fails to adequately support an issue raised, the appellate court may deem the issue forfeited. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 964.)

Luo asks that this court reverse and remand the matter for a new trial regarding a determination of the "true time-share" of the parties for custody and support purposes. The issue of the time-sharing of the minor children was not before the court at the trial that was the subject of the judgment before us on appeal.

Luo also asks this court to reverse the trial court's finding that she has the ability to work. As noted, *ante*, substantial evidence supports the trial court's finding that Luo has the ability to work. Luo fails to provide any evidence or argument to the contrary, other than the fact the minor children have been receiving Social Security disability income. Luo offers no authority that a previous award of disability benefits forever precludes a family law court from making a finding that a spouse is now able to become employed.

Finally, Luo asks this court to determine her ability to buy Yu out of the marital home. Luo fails to identify where she made an argument to the trial court regarding her ability to do so. She cannot raise an argument for the first time on appeal, and certainly cannot do so without any legal or factual support.

DISPOSITION

The judgment is affirmed. Respondent to recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.